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July 25, 2021

BY ECF

Honorable Cecelia G. Morris
Chief United States Bankruptcy Judge
U.S. Bankruptcy Court for the Southern District of New York
355 Main Street
Poughkeepsie, NY 12601-3315

Re: *Fairfield Sentry Ltd. (In Liquidation), et al. v. Theodoor GGC Amsterdam, et al. (In re Fairfield Sentry Ltd.)*, No. 10-ap-03496-CGM; *Fairfield Sentry Ltd. v. ABN AMRO Schweiz AG*, No. 10-ap-03635-CGM; *Fairfield Sentry Ltd. v. ABN AMRO Schweiz AG*, No. 10-ap-03636-CGM

Dear Chief Judge Morris:

The Liquidators' eleventh hour request for an adjournment of Monday's deadline to respond to the motion to dismiss the claims against "HSBC" for lack of service of process should be denied. The question raised by that motion – is "HSBC" properly identified in the operative or proposed amended complaints, and was it properly served – remains one for the Court to resolve.

In Adv. Pro. No. 10-3635, the Liquidators named an entity identified only as "HSBC." They purported to serve that entity by mailing a summons in 2012 to 8 Canada Square, Canary Wharf, London in the United Kingdom. For the reasons set out in the motion to dismiss filed on May 24, 2021 (Dkt. 3783), service on "HSBC" was ineffective both because it failed to comply with international service rules and because it failed to apprise the intended defendant that it was being sued (given the hundreds of entities that do business in the U.K. under the name "HSBC").¹

The Liquidators now propose that a different entity, HSBC Bank USA, N.A. – a domestic bank with its principal place of business in New York, not the U.K. – is the correct defendant. Even if it were true that HSBC Bank USA, N.A. is the correct entity to sue, it would not moot the

¹ The Liquidators state that they "intend to dismiss HSBC from adversary proceeding 10-3636 for an unrelated reason." In fact the reason is not "unrelated": contrary to representations made to counsel, it turned out that none of the transfers at issue in that case were made to any "HSBC" entity according to the Fairfield Funds' own records.

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pending motion, since HSBC Bank USA, N.A. is not named in the operative or proposed amended complaint, and the Liquidators have never even attempted to serve that entity.

As for the last minute request for additional time, the fact that the Liquidators apparently still do not know who they are trying to sue on the relevant transfers is no reason for delay. They have had plenty of time to figure it out. As recited in our moving papers, Cleary Gottlieb most recently raised the issue of the improper naming of “HSBC” months ago, in response to the Court’s April 26, 2021 Order setting a date for defendants to challenge service. We offered to work collaboratively with the Liquidators’ counsel to sort out the identity of the relevant transferee. The Liquidators refused. It was only after we declined to answer a subpoena directed generically to “HSBC” and stated that we intended to seek a protective order from the Court that the Liquidators agreed to provide the records on which their complaint was based. Those records identified to us, for the first time, the transfers “HSBC” purportedly received. With that information, we were able to search wire records to identify the transfers at issue. Those records show that the transfers were received into correspondent accounts at HSBC Bank USA, N.A. *that belong to a third party*, not any HSBC Group affiliate. In other words, the records show that HSBC Bank USA, N.A.’s role with respect to the transfers is that of a bank, not a beneficial recipient. We produced those records to the Liquidators a month ago, on June 29, 2021. The Liquidators have provided us with no evidence that would contradict those records. A decade into the litigation, it is clear that the Liquidators have no basis to sue any HSBC entity on these transfers, yet insist on clinging to those claims anyway.

The pending motion seeking dismissal of claims against “HSBC” for improper service is ripe now, and nothing that has occurred since that motion was filed has mooted it. The Court should deny the Liquidators’ request for adjournment on the eve of filing.

Respectfully submitted,

/s/ Nowell D. Bamberger
Nowell D. Bamberger

Enclosures

cc: All Counsel of Record (ECF)